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Supreme Court of the United States

———— TERM, 1943

NO. 128

ALVIN EMMETT SKINNER, *Petitioner,*

vs.

WILBER L. DINGWELL, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Supreme Court of the United States

October Term, 1943

In Bankruptcy

ALVIN EMMETT SKINNER, *Petitioner,*

vs.

WILBER L. DINGWELL, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To: The Honorable Harlan F. Stone, Chief Justice, and to the Associate Justices, of the Supreme Court of the United States.

Your Petitioner respectfully petitions this Honorable Court for Writ of Certiorari, to review the decision and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, rendered in the above entitled cause on March 31, 1943, which decision affirms the judgment of the United States District Court for the Southern District of Iowa, Central Division, and holds:

(a) That the Petitioner is not a farmer within the definition of Section 75-r of the Bankruptcy Act.

(b) That Debtor lost title to his real estate by the issuance of a sheriff's Deed, Petitioner having failed to secure an injunction.

(c) That cause must be dismissed for want of jurisdiction.

CIRCUIT COURT'S OPINION.

The opinion of the Circuit Court of Appeals is reported in 134 Fed. (2) 391. Adv. Sheets for May 10, 1943.

JURISDICTION.

The Jurisdiction of this court is sought to be invoked under the provisions of Section 347 of the Judicial Code, as amended by the act of February 13, 1925, (28 U. S. C. A. 347.)

In view of the importance of the question with respect to proceedings instituted under Section 75 of the bankruptcy act, and because a liberal and proper construction of Section 75r is necessary to carry out the intent of Congress, a Writ of Certiorari should be granted.

Wright vs. Bank, 300 U. S. 440.
Adair vs. Bank, 303 U. S. 350.
First National Bank vs. Beach, 301 U. S. 335.
John Hancock Insurance Company vs. Bartels, 308 U. S. 180.

STATUTES INVOLVED.

(A) 75 (r)—"For the purposes of this section, and Section 4 (b) the term "Farmer" includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

(B) 75 (n)—"The Filing of the Petition or Answer with the Clerk of Court or leaving it with the Conciliation Commissioner for the purpose of forwarding the same to the Clerk of Court praying for relief under this Section shall immediately subject the farmer and all his property wherever located for all the purposes of this section to the exclusive jurisdiction of this Court."

(C) "In all cases where at the time of filing the Petition the period of redemption has not or had not expired * * * the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this Section."

(D) "In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights, and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

SUMMARY STATEMENT OF MATTER INVOLVED.

1. This cause concerns the proper construction of Section 75 (r) and (n) of the Bankruptcy Act 11 U. S. C. A., Sec. 203 (r) and (n).

2. The Petitioner is the owner and operator of a farm, and the Respondent is a mortgagee. (Tr. Pgs. 3 and 4.)

3. Petitioner acquired the farm in question by will, from his father, in which his mother owns a life estate; and acquired the real estate, a business block in the town of Adel, Iowa, under the Will from his father, on which the respondent has a mortgage. The farm land is encumbered by a mortgage in favor of the Equitable Life Insurance Company of Iowa.

4. On the 3d of June, A. D., 1941, Petitioner filed with the District Court of the United States, Southern District of Iowa, Central Division, a Debtor's Petition in proceedings under Section 75(a) to (r), of the Bankruptcy Act. The Court entered an Order approving the form of Petition, and referred it to Conciliation Commissioner Newton. The Petitioner lists in his schedules all his property including a building in Adel, Iowa encumbered by a mortgage held by Dingwell. At the first meeting of creditors, Debtor filed a proposal of composition, to which all creditors except Ding-

well assented. (Tr. Pgs. 25 to 32.) Thereupon Dingwell moved the Commissioner to dismiss the proceedings because the Petitioner was not a farmer. Upon the proof taken, the Commissioner held that he was a farmer, which was reviewed by the District Judge, and sent back to the Commissioner for further proof. On July 2, 1942, the Commissioner again held upon the proof that Debtor was a farmer.

5. Upon review taken to the District Court, on July 14, 1942, the Court held that the Debtor was not a farmer, and directed the Conciliation Commissioner to wind up the proceedings. Thereafter, Petition for Rehearing was filed by the Debtor with the District Court, asking the Court to hold the debtor was a farmer. This Petition for Rehearing was overruled.

6. After the filing of the Petition of the Debtor, the creditor, Dingwell, refused to recognize the jurisdiction of the bankruptcy court, and proceeded with foreclosure. Upon the application of the Debtor, the District Judge, on the 27th of August, 1941, entered a restraining Order, restraining Dingwell and the Sheriff from proceeding further in the foreclosure of his mortgage. On the 21st day of July, 1942, after the District Court had held the Debtor was not a farmer on review, by an ex parte Order entered by the District Court, dissolved the restraining order. Thereafter the Debtor filed a Petition with the District Court asking him to vacate this order, setting aside the restraining order, which the District Court refused to do.

7. Thereafter, an appeal was taken to the Circuit Court of Appeals for the 8th Circuit from the order of the District Court holding the Debtor was not a farmer, and from the Order dissolving the restraining Order. On March 31, 1943, the Circuit Court of Appeals for the Eighth Circuit affirmed the District Court, holding that the Debtor was not a farmer within the meaning of Section 75 (r).

8. It also held that notwithstanding the appeal to that court, the dissolving of the restraining order, and the issuance of the sheriff of a Deed, that Debtor had lost his interest in the mortgaged property in controversy, on the authority of *Hardt vs. Kirkpatrick,* 91 Fed. (2) 875 (9th Circuit).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. The decision of the Circuit Court of Appeals, 8th Circuit, is in conflict with decisions of many District Courts and with the spirit of the decisions of this Court in interpreting what is a farmer. It is in conflict with *Hamburg Bank v. Kitchens,* 116 Fed. (2) ~~276~~ 377 (8th Circuit.) And the decisions of both the District and Circuit Courts are in many instances openly conflicting.

2. In the *Beach* case *supra* the opinion states that 75-r contains "two branches" of the definition of a farmer. "They are not equivalent. They are used by way of contrast. Occasions must have been in view when the receipts of income derived from farming operations would make a farmer out of someone who personally or primarily was engaged in different activities." While this decision was liberally followed in

Williams vs. Great Southern Life Insurance Co., 134 Fed. 2nd, 38, and many others

yet in this case

Skinner vs. Dingwell, 134 Fed. 2nd, 391 and *Shyvers vs. Security etc., Bank,* 108 Fed. 2nd, 611, and many others

the court held that because of other activities the Debtor or Bankrupt was not a farmer thereby leaving no definite guide to follow in determining that question.

3. The court holds that Petitioner lost his title by allowing the Certificate of Sale to emerge into a Sheriff's Deed and dismisses his cause of action whereby the plain, clear and concise language and the intent and purpose of Sec. 75 (n) is completely overlooked or ignored. In the first paragraph therein it was the intention of Congress and it clearly states that the filing of the Petition or Answer with the clerk or even with the Commissioner to be forwarded to the clerk, subjects the farmer and all his property to the exclusive jurisdiction of the Court, the intention being to divest all others of jurisdiction or authority over the farmer's property. Next paragraph provides "That in all cases where at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or

where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

This paragraph clearly intended to supplement the preceding paragraph giving exclusive jurisdiction by creating an absolute moratorium whereby no rights of property could be lost in any manner or form while the proceedings were pending.

Following this it is provided in proceedings under this section * * * the jurisdiction and powers of the Courts and the jurisdiction of Appellate courts shall be the same as "if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's Petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

These three provisions clearly fix the status of the farmer and his property and precluded not only a loss of title by Sheriff's Deed but precluded any authority for a dismissal and necessitated the administration of the estate under these mandatory provisions by sale of the real estate through a trustee, as provided in Sec. 75 (s) (3).

WHEREFORE your Petitioner prays that a Writ of Certiorari issue under the Seal of this court directed to the United States Circuit Court of Appeals, Eighth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the above entitled cause, being numbered 12180 on its docket, to the end that this cause may be reviewed and determined by this Honorable Court, as provided for by Section 347, Title 28, U. S. C. A.; and that the judgment herein of said Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as this court may deem proper.

ALVIN EMMETT SKINNER, *Petitioner,*
R. BROWN, *Counsel for Petitioner.*

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1943.

* * * * *

ALVIN EMMETT SKINNER, *Petitioner,*

vs.

WILBUR L. DINGWELL, *Respondent.*

* * * * *

OPINIONS BELOW.

Three questions are involved in this cause:

1. Whether or not Alvin Emmett Skinner is a farmer within the definition of Section 75 (r) of the Bankruptcy Act. The trial court held that he was not a farmer. The Circuit Court of Appeals held that Debtor was not a farmer, affirming the judgment of the district court for the southern district of Iowa, central division.

2. The Circuit Court held that because Sheriff's Certificate of Sale had merged into a Sheriff's Deed while proceedings were pending that Petitioner lost title to his real estate and that the subject of the controversy had passed from the jurisdiction of the Bankruptcy Court.

3. The Court affirmed the opinion of the District Court whereby the proceedings were dismissed instead of administering Petitioner's Estate as that of a Bankrupt as provided in Section 75-(n).

SPECIFICATIONS OF ERROR.

1. The Circuit Court erred in holding that Alvin Emmett Skinner, under the facts in the record, was not a farmer within the definition of section 75 (r).

2. The Court erred in holding that because the Sheriff's Certificate of Sale had merged into Sheriff's Deed the subject of the controversy had passed from the jurisdiction of the Bankruptcy Court.

3. The Court affirmed the opinion of the District Court whereby the proceedings were dismissed instead of admin-

istering Petitioner's Estate as that of a Bankrupt as provided in Section 75-(n).

ARGUMENT.

There are three issues here involved growing out of the opinions in the District and Circuit Court. As heretofore stated on page 1 they are (a) Petitioner is not a farmer. (b) While proceedings were pending he lost title to his real estate by Sheriff's Deed. (c) Dismissed as Bankruptcy Court was without Jurisdiction.

AS TO (a)

The Circuit Court states that income from sources other than the farm is $5533.98. The income from the farm, $2,-828.09 for 1940. In this computation the court includes the cost of furnaces, plumbing and other material, total, $3,-221.51. Deducting this cost leaves income, $2312.47 (Tr. 44) or $515.62 less than farm income. The opinion of the District Court indicates the same error. The record shows that Petitioner had a life estate in 140 acres of highly productive Iowa land, owned other real estate, (Tr. pg. 3), owned live stock, farm machinery and farm products, $5345.00. (Tr. Pgs. 6 & 7). In 1940 produced $2828.09. In 1941, $3497.76. (Tr. pgs. 44 and 45). Lived in Adel but supervised and managed all operations on this farm from his father's death in 1932 devoting about two months of his time exclusively to work thereon, the remainder in selling furnaces, repairing same and operating an improvised saw mill in all of which he had an investment of about $1500.00. (Tr. 6 & 7). As Petitioner, because of his experience possessed a much greater earning capacity in the sale and installation of plumbing and heating than he had as a farm laborer he devoted more of his time to the more profitable vocation employing less skilled and expensive labor to carry on the farm work and the operation of the saw mill. In years of Depression and drought the profits of the farm had been greatly reduced. To save it something had to be added to that which it would produce. To add that something Petitioner engaged himself otherwise and with an investment of but $1500.00 he was able to secure a net return not great-

ly less than the return from the farm in which the investment was many times greater. Had Petitioner not engaged in these additional activities but had lived on the farm and devoted all his time to labor thereon clearly his being a farmer could not possibly have been open to question or doubt. The fact that he, in order to save his life estate in the farm and the title of remainderman therein through the years of depression and drought through other activities added very substantially to is net income, did that change his vocation? Does the exercise of intelligence and efficiency in the struggle to save the loss of a farm change the vocation? The fair market value of the farm with all farm equipment owned in connection therewith the investment represented is not less than $20,000.00. The investment in the furnace business, etc. was about $1500.00. In view of the above facts as disclosed by the record can it be that farm owners such as this Petitioner was not intended to be included in Section 75 and were not intended to be afforded it's protection? Here Petitioner is a farmer if the following cases and many others which could be cited are correct pronouncements of the law.

First National Bank and Trust Co. vs. Beach, 301 U. S. 435.

Hamburg Bank vs. Kitchens, 16 Fed. (2) 337 (8th C. C. A.).

Leonard vs. Bennett, 116 Fed. 128 (9th C. C. A.).

Chaney vs. Stover, 123 Fed. (2) 946 (4th C. C. A.).

Williams vs. Great Southern Life Insurance Co., 124 Fed. (2) 138 (C. C. A. 5th).

First State Bank of Stratford (Texas) vs. Roach, 124 Fed. 325 (C. C. A. 5th).

but an equal number of cases could be cited both of the District and Circuit Courts in which the above decisions are stricken down and on records even more favorable debtors and bankrupts are adjudged not to be farmers and their cases dismissed. Because of this hopeless confusion Certiorari should be granted.

AS TO (b) and (c)

The Circuit Court held that it had lost jurisdiction because the Certificate of Sale had merged in a sheriff's Deed

and as it had thus lost jurisdiction the proceedings were dismissed. A careful reading of Section 75 and amendment thereto clearly presents a program for the relief of distressed farmers. Paragraph (n) presents that plan by first providing that the filing of the Petition or leaving it with the Commissioner subjected the farmer and all his property to the exclusive jurisdiction of the Court. In so providing they immediately afforded the farmer protection against being destroyed by creditors enforcing obligations. Second. It was well known that thousands of farmers had suffered foreclosure, that the issuance of sheriff's deeds threatened them therefore to retain the status quo of the farmer as against loss of title it was provided that the filing of the Petition should extend the period of redemption for the *period necessary to carry out the provisions of this section.* These two provisions clearly gave him as a farmer, full protection but in event it were found he was not a farmer upon the dismissal of the proceedings the right of redemption would expire. To give the farmer some opportunity to still save his farm they added the last paragraph providing that his status should be the same as if a voluntary Petition for Adjudication had been filed and *a decree of adjudication had been entered.* In paragraph (s) 3 provision is made for 90 days in which to redeem from a sale and for a sale in event the farmer could not make redemption as provided therein. Congress never intended Bankrupt farmers should furnish injunction bonds to save their farms.

This orderly program is stressed and declared mandatory in

John Hancock Insurance Co. vs. Bartels, 308 U. S. 18.

Borchard vs. California Bank, 310 U. S. 311.

an extended argument by Petitioner can neither add to or detract from the plain, concise language of said paragraph (n) nor is such necessary to disclose the triple purpose of said Section. The Circuit Court cites

Hardt vs. Kirkpatrick, 91 Fed. (2) 875 (9th C. C. A.).

That case was decided July 26, 1937. Just how it can now be harmonized with the subsequent decisions of this court is most difficult to understand. It is a sufficient Answer to cite the clear and explicit provisions in Par. (n) in pursuance of which the Court took exclusive jurisdiction of the

property, the right of redemption was stayed for the purpose of carrying out the provisions of this Section and the status of the Petitioner was that of an adjudicated Bankrupt. These proceedings are still pending. The purpose of the Section has not been carried out as the right of rehearing, appeal and certiorari have not expired.

MacKenzie vs. Engelhard Co., 266 U. S. 131, 36 A. L. R. 416.

Brannon vs. Commonwealth of Kentucky, 162 Ky. 350.

State vs. Tugwell, 19 Wash. 238.

Bloom v. People, 23 Colo. 416.

If the provisions of this Section have not been carried out the Deed issued is absolutely void and they have not been carried out as this Court can take jurisdiction, reverse the Circuit Court and adjudge Petitioner entitled to the benefits of the Section. As Sub Sec. (s) is an amendment to Section 75 the two must be construed together as one enactment. Sub Sec. s (3) provides "If however the Debtor at any time fails to comply with the provisions of this Section or with any Order of Court made in pursuance of this Section" the Court may Order the real estate sold as provided therein, viz. a right by debtor to redeem for 90 days. The fact that Petitioner was adjudged not a farmer did not change his status as an adjudicated Bankrupt under Paragraph (n). As he was adjudged not a farmer he could not comply in that respect "with the provisions of this Section" therefore it became the duty of the Court to sell his land as provided in sub sec. (s) 3 as it had jurisdiction of the land the right of redemption remained and the Petitioner's status quo was that of an adjudicated Bankrupt whereby of necessity the Court had no authority to dismiss his proceedings and the Court had no authority to say a valid Sheriff's Deed had been issued or that it could deny itself of the mandatory statutory duty of carrying out the provisions of the Act as this Court declared must be done in the *Bartel and Borchard* cases, *supra*. The Circuit Court in citing the *Hardt* case, *supra* apparently relied on what is there said and assumed that because Sub Sec. s (2) provided for a three years stay that no stay prior thereto existed. Section 75 as originally enacted provided for the stay until the provisions of the Act was carried out in behalf of the farmer.

The Supreme Court was authorized to issue rules of procedure and did issue a rule that the proceedings under Sec. 75 should be completed in 90 days. When Sub Sec. (s) was added the objective was to provide a three year moratorium. Necessarily in providing this period of moratorium it was necessary to state the time which was fixed at three years, therefore Sub Sec. s (2) specifically provides for the three year moratorium and the stay of judicial proceedings during that time. The three years stay was an addition to the stay under Sec. 75 as proceedings under that Sec. were to be concluded in 90 days. To preclude any contention that the stay under Sec. 75 terminated with the proceedings under that Section, clearly all doubt was removed by specifically providing that when the Court took jurisdiction under the amendment an Order should be entered extending all rights for the three years. But since Sub Sec. (s) amends Sec. 75 the two become but one act and therefore since the amendment extended the procedure then all the provisions of Sec. 75 necessarily applied thereto,

Baxter vs. Savings Bank, 92 Fed. (2) 405 (5th C. C. A.)

which was cited and considered an important case in the Circuit Court because in that case an amended Petition had been filed asking to be adjudged a Bankrupt and held because of that Debtor was entitled to have his estate administered as an ordinary Bankruptcy proceedings. It was not necessary for the Court to base its decision on the prayer of the amended Petition since the last paragraph in (n) fixed the Debtor's status as an adjudicated Bankrupt. The Circuit Court distinguished and refused to follow the *Baxter* case because here no amended Petition had been filed. In doing so it wholly ignored the status of Petitioner as that of an adjudicated Bankrupt under (n). The status of a farmer and his property are so clearly fixed in Section 75 (n) that further argument here could not add anything thereto. There all proceedings against his property is stayed, he is an adjudicated Bankrupt and the Circuit Court committed error in holding that he lost title to his real estate and that it was without jurisdiction to administer upon his estate as such adjudicated Bankrupt and as provided in 75 (s) 3 as he was unable to comply with the provisions therein viz. qualify as a farmer.

CONCLUSION.

That the decisions of the Circuit Courts as to what constitutes a farmer are unquestionably in hopeless variance. They can not possibly be harmonized. Recent decisions holding that the Debtor must be actually personally engaged in agricultural labor, others holding otherwise, some holding the principal income must be derived from personal labor, others from rental whereby the decisions are in hopeless conflict. There seems to be no case to be found where the last paragraph of 75 (n) fixing the status of a Debtor as an adjudicated Bankrupt was ever given judicial consideration. The cases wholesale were dismissed under Sec. 75 if adjudged not to be a farmer and the farmer's title lost. Many times proceedings under Sec. 75 continued far beyond the 90 days during which time the statutory year of redemption expired. In all those cases just as in the case here the proceedings were dismissed, the farmer's title lost and he financially destroyed. It is the more important now as the price of farm products and land have very substantially recovered and a very large percentage can now refinance within the 90 days. As the question here presented under (a) and (b) have not heretofore been judicially considered but completely ignored and the plain, positive provisions of Sec. 75 (n) have been wholly denied Debtor this Court should grant Certiorari.

Respectfully submitted,
R. Brown, *Counsel for Petitioner.*